

Phase 5 Post-Acceptance Performance



GSA Federal Office Building, Region 10 Seattle, Washington

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ENERGY

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Phase 5: Post-Acceptance Performance

- ★ ☐ O&M per Task Order
- ★ ☐ M&V Activities
- ★ ☐ Invoices and Payments
- ★ Modify contract as required
- ★ FEMP Life-of-Contract Services

Key
★ Agency Action
☐ ESCO Action

★ ☐ Task Order Closeout

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Notice: The Team Must Go On

- *Getting construction finished and paying the invoices is not enough in federal ESPCs.*
- *The Agency is responsible for*
 - the government's compliance with its contractual responsibilities and
 - ensuring that guaranteed savings are achieved.
- **Agencies can bank on being held accountable for these responsibilities.**

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Best Practice for the Performance Period

- Designate a primary contact who is responsible for
 - maintaining contact with FEMP through the Life of Contract program, and
 - maintaining continuity of documentation and awareness of the ESPC throughout the performance period.

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★ □ O&M and R&R of installed equipment, per TO

- Operations & maintenance and repair & replacement of installed equipment are the ESCO's responsibility
- However, performance of O&M/R&R **tasks** may be assigned to ESCO, agency, or shared
- *For each ECM, the TO should specify:*
 - Who will carry out O&M and R&R tasks
 - How performance will be verified
 - What to do if tasks are not performed
- If agency does not meet its O&M or R&R obligations, the guarantee may be compromised.

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- **If government performs O&M, TO will specify:**
 - Performance requirements (what & when)
 - Requirements for agency record keeping
 - Provisions for ESCO to monitor and document agency performance
 - Remedies for deficiencies in agency's O&M performance that compromises equipment performance
 - **ESCO is still responsible for O&M and R&R**
 - Provides O&M manuals defining O&M procedures
 - Provides training to agency on O&M
 - Notifies site of any deficiencies in O&M and R&R

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Bottom line:**Be aware of site's O&M and R&R responsibilities**

- Ensure that O&M and R&R responsibilities are understood for each ECM
- Comply with ESCO's O&M manuals and TO instructions
- Maintain O&M and R&R records per TO requirements
- Ensure that personnel receive training and have access to O&M manual
- Refer to guidance on O&M on FEMP Web Site

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□ Annual M&V Activities

- ESCO
 - Performs M&V activities per M&V Plan
 - Produces M&V report
 - Revises per agency comments if necessary
- Agency
 - Facilitates and witnesses M&V activities
 - Reviews M&V reports
- Agency and ESCO
 - Resolve any issues

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Agency Facilitates M&V Activities with ESCO

- Provide for ESCO, as needed to carry out M&V:
 - Access, data, escort
 - Records: Utility bills, maintenance, occupancy, etc.
- Coordinate meeting to plan ESCO site visit
- Schedule M&V inspections/data collection
 - Schedule for actual operating conditions and availability of key personnel

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Government Witnessing

The purpose of witnessing commissioning and M&V is to independently verify performance of ECMs.

- **Best Practice:** Designate a knowledgeable government witness to accompany the ESCO during M&V activities.
- Focus on:
 - Critical systems – EMCS set points, chiller/boiler performance tests
 - ECMs generating the most energy/cost savings
 - Sampling proper installation of ECMs such as lighting, motors, VFDs



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Why Witness?

- Gain independent confirmation of ECM performance (and savings)
- Be prepared for future audits
- Part of agency ESPC administration responsibility
- Promote mutual understanding and ownership in agency-ESCO partnership

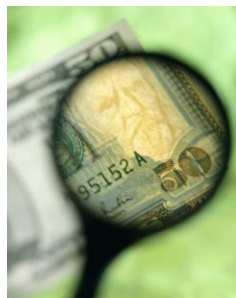
- A graded approach is practical
 - Prioritize to focus on ECMs that contribute most savings and/or represent greatest risk or uncertainty

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FEMP Guidance on Witnessing

- FEMP Guidance on witnessing
 - Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities
 - Available on FEMP ESPC resources page



- Trust, but Verify.

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M&V Best Practice – Review of M&V Reports

- Agencies should put procedures in place to ensure prompt review of the ESCO's annual M&V report, in accordance with FEMP guidance.
- These reports document whether all parties and the delivered energy and cost savings meet the TO requirements.
- The annual M&V report must be in accordance with the M&V plan in the TO.

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Review of M&V report ideally verifies that:

- M&V plan was followed
- Field-measured values were carried over to report
- Factors held constant for calculations are per task order
- Calculations are correct and follow the M&V plan
- Utility and escalation rates used to calculate cost savings are correct
- Report provides all required information
- Savings guarantees were met

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ECM Performance Issues & Resolution

- Provisions for addressing disputes
 - Standard clauses included in IDIQ by reference
 - May be part of M&V Plan
 - May be added to TO by means of TO RFP



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Savings Shortfalls

- If M&V report shows savings shortfall
 - ESCO is responsible for resolving ECM performance issues and proposing remediation options
 - Agency withholds part of payment equal to shortfall, and restores payments after issues are resolved
- If agency is found to be (contractually) responsible for shortfall, payments per the TO schedules would continue.



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★ □ Invoices and Payments

- Invoices begin after agency CO has formally accepted the project
- Usually annual, at beginning of performance year
- Agency is responsible for verifying that invoices contain any required documentation of services provided before paying



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Change and Contract Mods

- Modifications after acceptance are often administrative, such as:
 - Putting money on the contract to make a payment
 - Change in CO/COR
 - Documenting M&V report acceptance
 - Documenting changed conditions
- Consider what contract actions would be required if the agency/site decides to
 - Remodel part or all of the building
 - Replace equipment with better technology

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Partial or Complete Termination

M&V Best Practice:

In the case of demolished or decommissioned buildings or removal of ECM equipment by the government, the agency CO should promptly initiate a contracting action to buy out that portion of the contract involving ECMs that are no longer in place or no longer functional.

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Partial or Complete Termination

- Partial termination can occur when:
 - Buildings are being shut down, excess savings allow for buyout of ECM, other
- Complete termination
 - Shutdown of site
- Follow the FAR Part 49
- Use the TO – 5 schedule
 - Shows outstanding capital investment on entire project



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GAO's Latest ESPC Audit Findings – Highlights

ESPCs – Additional Actions Needed to Improve Federal Oversight <http://www.gao.gov/assets/680/670851.pdf>

- In 14 of 20 audited projects:
 - “Reported savings included savings that were not achieved due to agency actions”
 - Agency “did not operate or maintain equipment as agreed,” or “removed or abandoned equipment”
- Agencies’ oversight of ESPCs was inadequate
 - in witnessing / “observing” ESCO’s M&V activities
 - in effective review of M&V reports
 - in systematically reviewing ESPC portfolios to determine impacts of changing circumstances (such as facility usage)

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GAO's Recommendations and Next Steps

- M&V report templates will be revised – improved transparency of unachieved savings will be required.
- FEMP Life-of-Contract services will work toward helping to ensure that agencies witness M&V activities and review M&V reports effectively.
- FEMP will develop an agency-level ESPC portfolio report format that will provide a summary of:
 - project performance for projects in performance period
 - project-level performance issues identified from FEMP’s Life of Contract activity
 - comparison of project interest rates with current trends
 - recommendations based on findings provided

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Keeping it Together: Post-Acceptance Performance



The only certainty over time is change.

- Things WILL change over the life of the contract
- CO administration of change is usually required.
- A **contract management plan** (required for ESPCs by some agencies, including DOE) is essential for maintaining continuity of ESPC administration.

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FEMP's Life of Contract Services

The LOC Concept

- Help with Annual M&V and Changes Over Term of ESPC Contracts
- Ensure that
 - guaranteed savings are realized and
 - ESCO and agency comply with their contractual obligations throughout contract term.
- All sites having DOE IDIQ ESPC projects in the performance period will get FEMP LOC services

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FEMP LOC Services Address Quality Goals (see notes) and Help Manage Change

- Reminders/facilitation of M&V process
 - One call before M&V, one call after M&V
- Assistance with contract modifications
- Technical assistance with performance issues
- Track responsible CO, COR, COTR, technical staff
- Keep backup copies of key documentation
- Make staff aware of FEMP training and guidance

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★ □ Closeout of the Task Order

- Agency notifies ESCO by letter that the performance period is over and payments will cease
- If title to equipment and systems was not transferred to agency at time of project acceptance, ESCO transfers title now
- Submit the final Past Performance Evaluation to the PPIRS
- Agency may negotiate for continuing services from ESCO
- Complete all other closeout documentation consistent with agency procedures

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Review - 1

Q1: What are the ESCO's responsibilities in M&V activities?

A: Perform tests and measurements, submit M&V report, revise report as necessary, resolve issues.

Q2: What are the agency's roles in M&V activities?

A: Facilitate visits, witness M&V, review M&V report, resolve issues

Q3: What happens when there is a reported savings shortfall?

A: Agency withholds part of payment equal to the shortfall, and then restores payments after issues are resolved.

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Review - 2

Q4: If a building improved through the ESPC is demolished, is a contract modification required?

A: Yes, modification, or partial or full termination

Q5: What is the only certainty over time (especially in ESPCs)?

A: Change

Q6: Must agencies retain key documents throughout the post-acceptance performance period?

A: Yes – developing and maintaining a Contract Management Plan helps maintain quality and value to the government.

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Exercise 6 –

Contract Administration in the Post-Acceptance Performance Period



Next:

O – Best Practices, Lessons Learned, Discussion ►